

Litigating Mental Capacity in Florida Courts: What Families Need to Know

Article
Lowndes
06.11.2025

There is often confusion regarding mental capacity in the legal context. This is true not only for families but even for experienced legal professionals. Additionally, litigating issues of mental capacity can take an emotional toll on the family and often creates unrest and confusion. This article will explain the process and provide some helpful tips for families.

What Is Mental Capacity?

Mental capacity refers to a person's ability to understand and make informed decisions. In Florida, whether someone has the capacity to make a particular decision depends on the type of decision, such as legal, medical, or financial. Capacity can fluctuate over time and can be limited to a particular set of facts or circumstances. Medical conditions such as dementia or Alzheimer's disease can raise questions about capacity but are not dispositive of the issue.

When Do Courts Get Involved?

Florida courts respect the rights of the alleged incapacitated person. A court generally will not step in unless there is a risk of harm, elder abuse, or exploitation. Having a well-planned estate plan prior to incapacity is one of the keys to avoiding this potential legal landmine.

But what do you do if you think your loved one lacks capacity and does not have a less restrictive alternative (such as an estate plan) in place? In addition to contacting a medical professional, you should contact a lawyer if your loved one is:

- Experiencing memory loss that extends beyond forgetfulness
- Having difficulty managing finances or other day-to-day activities
- Making poor choices or otherwise exercises poor judgment
- Becoming suddenly isolated from family members

Related Attorneys

Melody B. Lynch

Related Expertise

Estate & Trust Administration

Estate Planning

Guardianship

Probate & Estate Litigation

- Exhibiting sudden emotional or behavioral changes

The Capacity Hearing Process

Capacity is often litigated in a capacity hearing in a Florida guardianship action. The court will appoint three members of an examining committee, including one physician, to evaluate your loved one. The evaluations will include cognitive testing, mental health screenings, and interviews about activities of daily living. Each member of the examining committee will prepare a written report for the court.

In addition to the examining committee, the court will consider testimony from loved ones or caregivers and can review evidence in the form of relevant documents or medical or financial records.

What Happens at the Hearing?

The capacity hearing is an evidentiary hearing which generally occurs in person at the courthouse. During the court hearing, the judge will review and accept the examining committee reports. The attorneys will present arguments and evidence as to their respective legal positions. You may be called to testify as a witness, and you can call other family members, caregivers, or friends to testify as well.

The alleged incapacitated person has the right to legal counsel. The court often appoints an attorney for them, although they can retain private counsel of their choosing.

Possible Outcomes

At the conclusion of the hearing, the court can find that the alleged incapacitated person has full capacity. If this occurs, the case will be dismissed. In many cases, however, the court will enter an order finding that the person has limited capacity. If this occurs, the court will give guidance on the rights retained by the person and the rights that must be delegated to a guardian.

Finally, the court can make a finding of total incapacity. If so, a plenary guardian may be appointed to make all legal, financial, and/or medical decisions for your family member.

Steps You Can Take Now

Prior to commencing legal action, there are a few steps you can take now to help prevent or limit litigation later. First, create a robust estate plan that meets the needs of your loved one, ideally before it's too late! If it is too late to update or revise the existing estate plan, make sure to document any concerns or bizarre behavior, as this may be important evidence for a future capacity hearing. You can also consult with your family physician regarding the potential capacity issue, as infections or medication changes may help improve cognitive function.

If you have additional questions, please contact us at Lowndes or an attorney of your choice to evaluate the particular facts and circumstances of your case.